

## **SUPPORTING STATEMENT FOR PAPERWORK REDUCTION ACT SUBMISSION**

Draft Policy for Evaluation of Conservation Efforts When Making Listing Decisions  
January 17, 2002

### **Background**

1. The Endangered Species Act of 1973, as amended (ESA) (16 U.S.C. 1531 et seq.), specifies the process by which the Fish and Wildlife Service (Service) can list species as threatened or endangered. The ESA requires the Service, when considering whether to list a species, to take into account "those efforts, if any, being made by any State . . . or any political subdivision of a State . . . to protect such species." Conservation efforts are often formalized in conservation agreements, conservation plans, management plans, or other similar documents and are often developed with the specific intent of making listing species as threatened or endangered unnecessary. Sometimes these agreements or plans are not fully implemented or their results are not fully achieved at the time the Service must make a listing decision. These agreements or plans sometimes rely on future voluntary participation by private landowners, as opposed to enacted protective legislation or regulations. When an agreement or plan has not been fully implemented, results have not been fully achieved, or it relies on future voluntary conservation efforts, the Service must assess the likelihood that the efforts will be implemented and effective.

The development of an agreement or plan by a State or other entity is completely voluntary. When a State or other entity voluntarily decides to develop an agreement or plan with the specific intent of making listing the subject species unnecessary, the criteria identified in this policy can be construed as requirements placed on the development of such agreements or plans; the State or other entity must satisfy these criteria in order to obtain and retain the benefit they are seeking which is making listing of a species as threatened or endangered unnecessary. The development of an agreement, with the Services' involvement, that has the specific intention of making listing unnecessary constitutes a new information collection. One of the criteria identified in this policy is that such agreements and plans contain a provision for monitoring and reporting the progress and results of implementation of conservation efforts. This criterion also constitutes a new information collection.

### **A. Justification**

1. The development of conservation plans could prevent some species from becoming so imperiled that the only recourse is to add them to the list of threatened and endangered species under the Endangered Species Act. The purpose of this policy is to encourage such plans and to give applicants certainty about the standards a plan must meet in order to be considered acceptable by the Service. This policy identifies criteria that a conservation effort must satisfy to

ensure certainty of implementation and effectiveness and for the Service to determine whether a conservation effort contributes to making listing a species unnecessary or contributes to forming a basis for listing a species as threatened rather than endangered. The Service developed this draft policy to ensure consistent and adequate evaluation of agreements and plans in making listing decisions and to help States and other entities develop agreements and plans that will be adequate to make listing species unnecessary.

-In addition, conservation professionals have long considered monitoring and reporting to be an essential component of scientifically sound agreements and plans and currently incorporate monitoring and reporting into all agreements and plans. The Service included a criterion in this policy requiring agreements and plans to include monitoring and reporting provisions to ensure consistency with sound biological and conservation principles and for completeness. Monitoring is the mechanism for confirming success, detecting failure, and detecting changes in conditions requiring modifications to the agreement or plan or possibly emergency conservation efforts by the Service, States, or others. In addition, monitoring is sometimes incorporated in agreements or plans as part of implementation of experimental measures. Including provisions for monitoring and reporting is necessary to demonstrate that the conservation efforts are likely to be implemented and effective.

2. The responsibility for developing and submitting a plan is up to the entity that would like to benefit from the Service not listing a species. The criteria in the policy will be used by the Service to determine if implementation of the plan will likely result in making a listing unnecessary. This policy is necessary because while the Service has always required certainty of implementation and effectiveness of conservation efforts when evaluating listing decisions, we have not before established explicit criteria for judging whether a plan will be implemented and will be effective.

The responsibility for monitoring the progress and results of implementation of an agreement or plan is determined and agreed to during the development of the agreement or plan. In most cases, the State or other entity which is leading development of the agreement or plan will conduct the monitoring. However, specific efforts may be implemented and monitored by the Service, property owners, or other entities.

The nature of the monitoring and reporting component of an agreement or plan will vary according to the species addressed, land ownership, specific conservation efforts, expertise of participants, and other factors. Monitoring and reporting implementation of some efforts, such as the removal of a structural hazard to the species, may involve a single and simple task - documenting the removal of the hazard. Monitoring of other efforts may involve more complicated and/or time-consuming efforts; for example, monitoring habitat restoration efforts may involve conducting vegetation and species surveys annually for several years.

The information collected through monitoring is very valuable to the Service, the States and other entities implementing agreements and plans, and to others concerned about the welfare of

the species covered by the agreements and plans. Because the effectiveness of conservation efforts is determined through monitoring, monitoring is essential for improving future conservation efforts.

3. The Service does not require, but will accept plans and reports electronically. We have not developed a form to be used for submission of plans or reports. In the past, we have made plans and annual reports from States available through the Internet, and plan to continue this practice.

4. Developing and submitting an agreement is necessary in order for the Service to determine if it meets the criteria included in the policy. Monitoring individual agreements and plans is necessary because they are species- and site-specific. As a matter of practice, the Service, as well as the developer of an agreement or plan, ensure that there is no duplication of effort within an individual monitoring plan.

5. Although conservation efforts that are capable of making the listing of a species as threatened or endangered unnecessary are usually developed by States or other units of government, small businesses or small entities may develop agreements or plans or may agree to implement certain conservation efforts identified in a State agreement or plan. However, the burden for developing a plan or monitoring conservation efforts will be the same for small entities since the purpose of each plan and monitoring is to conserve a species so that it does not require the protections of the Endangered Species Act. The development and monitoring requirements announced in the policy are the minimum criteria that must be met by each effort in order for it to contribute to making listing unnecessary, and therefore cannot be lessened for small businesses.

6. If a plan is not developed and submitted, the Service may not be able to verify that actions are being taken that will contribute to making a listing unnecessary. If monitoring is not conducted, the Service may not be able to verify that the conservation efforts are being implemented, or are effective. The Service may then determine that, based on the best available information, listing the species is warranted.

The Service does not require more monitoring than necessary to accomplish the objective of the plan, which is to be effective. If this level of effort was reduced, the agreement or plan would provide less certainty that the efforts will be effective.

7. The Service generally asks States and other entities to submit monitoring reports annually, since most monitoring consists of measuring annual vegetation growth or species population growth. In addition, many agreements and plans are funded on an annual basis; monitoring annual progress in implementation is most appropriate. However, the Service may ask the State or other entity to report certain accomplishments or conditions before the scheduled submittal of an annual report, such as completion of construction of a habitat feature, the increase in severity of a threat, the detection of a new threat, and other factors that may have important consequences for the conservation of the species.

The Service does not require States or other entities to retain monitoring reports or data. However, States and other entities generally consider monitoring reports and data as important for planning future conservation actions. Also, State law, regulations, or practices may require State agencies to retain records for auditing purposes.

The Service does not have authority to protect monitoring information submitted to us; all monitoring reports are available for public review. We provide no pledge of confidentiality to those submitting reports to us. Sometimes a State may be concerned about releasing sensitive information such as species locations on private lands. However, if collecting and or reporting sensitive information is necessary for assessing the progress and results of implementation of the agreement or plan, and the State is unwilling or legally unable to collect and/or report this information, the Service may determine that the agreement or plan does not provide a high enough level of certainty that it will be implemented and effective and that, therefore, listing is warranted.

8. The Service has consulted with outside entities to obtain their views on information collection associated with this policy. As stated above, monitoring and reporting the progress and results of implementation of conservation efforts is considered an essential component of scientifically sound agreements and plans by conservation professionals and are currently routinely incorporated in agreements and plans. The Service included a criterion in this policy requiring agreements and plans to include monitoring and reporting provisions to ensure consistency with sound biological and conservation principles and for completeness.

The public was given an opportunity to comment on the information collection associated with this draft policy when we published the policy for public comment and review on June 12, 2000. We received two comments on our estimates of man-hours needed to complete an agreement and to conduct the monitoring. Both commenters indicated we had underestimated the number of hours. In our final policy, we will address these comments and indicate that we have increased our estimates (our new estimates are provided below).

9. The Service does not provide payments or gifts to those submitting monitoring reports.

10. There is no specific statutory authority for providing assurances of confidentiality to those submitting monitoring reports.

11. The information collection associated with the development of a plan as well as monitoring does not include any questions of a sensitive or personal nature.

12. Since 1994, the Service has entered into approximately 90 conservation agreements. About 16 of these agreements contributed to removing the need to list the covered species as threatened or endangered. Based on this information, the Service has entered into an average of about 13 agreements per year, 2 or 3 of which have made listing unnecessary. The Service expect that these averages will remain stable or increase. For purposes of this exercise, we will assume that

annually at least 6 agreements will be developed with the intent of making listing unnecessary, that at least 4 of these will be successful in making listing unnecessary, and therefore, in at least 4 cases, the States or other entities who develop these agreements will carry through with their monitoring commitments in order to keep the covered species off the list.

The Service estimates the States and other entities will spend anywhere from 1,000 to 4,000 person-hours, with an average of 2,500 person-hours to complete each agreement or plan that has the intention of making listing unnecessary. This is a one-time burden for each agreement developed. Based on a rate of \$50 per hour, we estimate that the cost to a State or other entity to develop the agreement will average \$125,000. The burden to the estimated 6 states or other entity that choose to develop an agreement in a given year totals approximately 15,000 hours. Therefore, the total cost of developing agreements to preclude listing under this policy is therefore, \$750,000.

We further estimate that for the 4 agreements that the States or other entities develop that are successful in precluding listing, they will spend an average of 320 hours to conduct the monitoring and 80 hours to prepare a report. Based on a rate of \$50 per hour, we estimate the cost to a State or other entity to conduct the monitoring and to prepare a report to average \$20,000. The annual burden to 4 States or other entities to complete monitoring and reporting totals 1,600 hours. The total cost of monitoring and reporting associated with this policy is, therefore, \$80,000.

Burden Estimates for Reporting Requirements for the Draft Policy for Evaluation of Conservation Efforts in Making Listing Decisions

Type of activity	Number	Average time required (hours)	Burden hours
Developing agreement with intent to preclude listing (one-time burden)	6	2,500	15,000
Monitoring (annual)	4	320	1,280
Report preparation (annual)	4	80	320

Total	14	2,900	16,600
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The nature of the monitoring and reporting component of an agreement or plan will vary according to the species addressed, land ownership, specific conservation efforts, and other factors. Monitoring and reporting implementation of some efforts, such as the removal of a structural hazard to the species, may involve a single and simple task - documenting the removal of the hazard. Monitoring of an agreement or plan which relies primarily on protection or preservation of an area of habitat may involve a simple site inspection to verify that the habitat has not been vandalized or otherwise adversely modified. Monitoring of other conservation efforts may involve more complicated and/or time-consuming efforts; for example, monitoring habitat restoration efforts may involve conducting vegetation and species surveys annually for several years. In addition, some species are easy to survey while others are difficult.

States and other entities often have management responsibility for the species which become the subject of agreements or plans. States and other entities routinely conduct monitoring and reporting of these species and conservation efforts for these species as a part of on-going management. In these cases, monitoring and reporting for purposes of compliance with this policy is not an added burden for the State or other entity.

13. We do not anticipate any costs to applicants beyond those described above except for copying and mailing plans and reports. We estimate that each plan will cost about \$50.00 for copying and mailing and each annual report will cost about \$50.00 for copying and mailing with a total annual cost of about \$500.00 (6 plan and 4 reports).

14. The Service estimates it will take an average of 160 hours for the Service to review each agreement or plan. Therefore, the annual burden to the Service resulting from 6 entities submitting agreements or plans with the intention of precluding the need to list a species totals 960. The Service estimates it will take an average of 2 hours per report for the Service to review the monitoring information collected on the species. Therefore, the annual burden to the Service resulting from 4 entities reporting information totals 8 hours. The cost of this review is estimated at \$30.00 per hour, or a total of \$240.00.

15. This is a new clearance request, and therefore, a program change.

16. Depending on public interest, publication of plans and reports may be made available through the Federal Register or the internet.

17. Not applicable. The Service is not seeking a waiver from the requirement to display the expiration date of the OMB approval of the information collection.

18. Not applicable. There are no exceptions to the certification statement in item 19 of OMB 83-I.

**B. Collection of Information Employing Statistical Methods:**

There is no statistical sampling or other respondent selection involved in this process.